



## **CALIFORNIA STATE PERSONNEL BOARD**

801 Capitol Mall • Sacramento, CA 95814

### **NOTICE OF PROPOSED AMENDMENT OF REGULATIONS AND STATEMENT OF REASONS**

**California Code of Regulations  
Title 2, Administration  
Division 1, Administrative Personnel**

**DATE: March 16, 2001**

**TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND  
MEMBERS OF THE GOVERNOR'S CABINET**

**SUBJECT: Right to Respond to Proposed Action**

#### **AUTHORITY:**

Under authority established in Government Code §18701, the State Personnel Board (Board) has proposed to change Section 52.3 of Title 2 of the California Code of Regulations to modify a state appointing power's notice obligations with respect to non-punitive terminations, demotions, and transfers under Government Code §19585; medical terminations, demotions, and transfers under Government Code §19253.5; and applications for disability retirement filed pursuant to Government Code §19253.5(i)(1).

#### **REFERENCE:**

This regulation is amended to implement, interpret, and/or make specific Government Code §§19253.5(f) and (i)(1), and 19585(f); and Skelly v. SPB (1975) 15 Cal.3d 194.

#### **PUBLIC HEARING:**

Date and Time:	May 1, 2001 from 1:00 p.m. to 1:30 p.m.
Place:	Auditorium 801 Capitol Mall, Room 150 Sacramento, California
Purpose:	To receive oral public comments about this action.

#### **WRITTEN PUBLIC COMMENT PERIOD:**

The public comment period for written comments will close **April 30, 2001**, at 5:00 p.m. This is to allow time for Board staff to provide copies of any written comments to Board members for their consideration at the time of the hearing; however, any person may also submit written comments about the proposed changes at the hearing. To be considered by the Board, written comments must be received at the attention of Karen Brandt at the

Subject: Right to Respond to Proposed Action

March 16, 2001

Page 2

State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period. During the 45-day written comment period, written comments may also be E-mailed to Karen Brandt at [kbrandt@spb.ca.gov](mailto:kbrandt@spb.ca.gov) or faxed to (916) 653-4256.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:**

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available upon request directed to the Board's contact person. The rulemaking file and the Document Relied Upon are available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Please contact Karen Brandt at (916) 653-1403 for additional information regarding this action. The backup agency contact person for this rulemaking file is Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, or telephone (916) 654-0842. Questions regarding the substance of these regulations should be directed to the contact person. Questions regarding the regulatory process in conjunction with these regulations should be directed to the backup contact person.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Board will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation is permanently amended.

**DOCUMENT RELIED UPON:**

California Court of Appeal, First Appellate District, unpublished decision in Brown v. SPB, Case No. A090512.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

Government Code §18701 authorizes the Board to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.

Government Code §19253.5(f) sets forth the notice procedures an appointing power must follow when notifying an employee of a medical termination, demotion, or transfer.

Government Code §19253.5(i)(1) sets forth the notice procedures an appointing power must follow before filing for disability retirement on behalf of an employee and placing that employee on involuntary leave.

Government Code §19585(f) sets forth the notice procedures an appointing power must follow before non-punitively terminating, demoting, or transferring an employee.

In Skelly v. State Personnel Board (1974) 15 Cal.3d 194, the California State Supreme Court held that, before an appointing power may dismiss a civil service employee who has permanent status, that appointing power must provide the employee with procedural due process, including notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond. On January 30, 2001, the California Court of Appeal, First Appellate District, issued an unpublished decision in Brown v. SPB, Case No. A090512, that held that, before an appointing power could place a permanent civil service employee on non-work status, the appointing power had to comply with the pre-removal safeguards set forth in Skelly.

California Code of Regulations, Title 2, Section 52.3 codifies the due process requirements set forth in Skelly that appointing powers must follow before taking adverse or other employment actions against their employees. The Board is proposing to amend Section 52.3 to:

1. Add to the existing regulation that an appointing power must comply with the Section's 5-day notice requirements when it non-punitively terminates, demotes, or transfers an employee pursuant to Government Code § 19585.
2. Add to the existing regulation that an appointing power must comply with the Section's 15-day notice requirements when it applies for disability retirement on behalf of an employee and places that employee on involuntary leave pursuant to Government Code §19253.5(i).
3. Clarify in the existing regulation that when an appointing power medically terminates, demotes, or transfers an employee pursuant to Government Code §19253.5, it must provide the employee with notice at least 15 calendar days prior to the effective date of the action.
4. Add references to Government Code §§19253.5 and 19585 to the NOTE.

**IMPACT ON SMALL BUSINESSES:**

No impact on small businesses is anticipated from the implementation of the proposed amendment. In *Skelly v. State Personnel Board* (1974) 15 Cal.3d 194, the California State Supreme Court held that, before an appointing power may dismiss a civil service employee who has permanent status, that appointing power must provide the employee with procedural due process, including the right to respond. On January 30, 2001, the California Court of Appeal, First Appellate District, issued an unpublished decision in *Brown v. SPB*, Case No. A090512, that held that, before an appointing power could place a permanent civil service employee on non-work status, the appointing power had to comply with the pre-removal safeguards set forth in *Skelly*. Implementing the court decision with the proposed amendment will affect only State Departments and current and prospective employees State Departments.

**LOCAL MANDATE:**

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to Section 17561 of the Government Code.

**COST ESTIMATES OF PROPOSED ACTION:**

**Costs or Savings to State Agencies:**

The changes to Section 52.3 have been made to: (1) implement changes in statutory and case law; (2) codify existing practices; and (3) further clarify existing procedures. It is anticipated that any additional costs that the proposed amendment may cause for state agencies will be insignificant.

**Impact on Housing Costs:**

The proposal will not affect housing costs.

**Costs or Savings in Federal Funding to the State:**

No impact.

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies:**

This proposal does not impose nondiscretionary costs or savings on local agencies.

**Cost Impact on Representative Private Persons or Businesses:**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Board has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:**

The adoption of the proposed amendment will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**DETERMINATION:**

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**FINAL STATEMENT OF REASONS:**

Because the proposed amendment does not make any substantive changes in Section 52.3 with respect to disciplinary proceedings, it is anticipated that the rulemaking action will be filed with the Office of Administrative Law pursuant to Government Code Section 18214, under which no Final Statement of Reasons is required. If a Final Statement of Reasons is nevertheless prepared, it may be obtained from the contact person or backup contact person when it becomes available.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:**

The text of the proposed amendment, the Notice of Proposed Amendment of Regulations and Statement of Reasons, and if prepared and when available for review, the Final Statement of Reasons, will be on the State Personnel Board website at: [www.spb.ca.gov](http://www.spb.ca.gov).

**STATEMENT OF REASONS:**

Section 52.3 codifies the due process requirements set forth in Skelly that appointing powers must follow before taking adverse or other employment actions against their employees. The proposed changes to Section 52.3 are being made to: (1) implement nondiscretionary changes in statutory and case law; (2) codify existing practices; and (3) further clarify existing procedures. The proposed amendment does not make any substantive changes in Section 52.3 with respect to disciplinary proceedings; the only substantive changes that are being proposed in Section 52.3 are being made with respect to non-disciplinary proceedings, as follows:

1. The Board is proposing to add to the existing regulation a requirement that appointing powers must provide five working days' notice to employees who are non-punitively terminated, demoted, or transferred pursuant to Government Code §19585. Subdivision (f) of Section 19585 provides that, "The employee shall receive at least five days' written notice of termination, demotion, or transfer and shall have the right to appeal the action to the board." Pursuant to that subdivision and existing practice, it is the Board's understanding that appointing powers traditionally have been following the notice requirements set forth in Section 52.3 and Skelly when they notify employees of non-punitive actions under Government Code §19585. This addition, therefore, simply codifies existing law and practice.
2. Effective January 1, 2000, subdivision (i) was added to Government Code §19253.5. That subdivision sets forth the procedures an appointing power must follow when it applies for disability retirement on behalf of an employee and places that employee on involuntary leave. That subdivision provides, in relevant part, that, "The appointing power shall give the employee 15 days written notice of its intention to file such an application and a reasonable opportunity to respond to the appointing power prior to the appointing power's filing of the application." On January 30, 2001, the California Court of Appeal, First Appellate District, issued an unpublished decision in Brown v. SPB, Case No. A090512, that held that, before an appointing power may place an employee on non-work status, the appointing power must comply with the pre-removal safeguards set forth in Skelly, which include notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond. The proposed amendment modifies Section 52.3 to reflect the requirements set forth in Government Code §19253.5(i) and Brown v. SPB.
3. Pursuant to Government Code §19253.5, an appointing power may medically terminate, demote, or transfer an employee. Subdivision (f) of Section 19253.5

Subject: Right to Respond to Proposed Action

March 16, 2001

Page 6

provides that, "The employee shall be given written notice of any demotion, transfer, or termination under this section at least 15 days prior to the effective date thereof." The existing Section 52.3 requires appointing powers to comply with Skelly's pre-removal safeguards when notifying employees of medical terminations, demotions, and transfers. However, existing Section 52.3 is not clear as to whether an additional 5 working days must be added to the 15 days' notice required under Section 19253.5(f). The proposed regulation amends Section 52.3 to clarify that, as set forth in Section 19253.5(f), an appointing power must give an employee notice at least 15 calendar days before the effective date of a proposed medical action.

4. The proposed regulation adds references to Government Code §§19253.5 and 19585 to the NOTE.

Kathie Vaughn, Chief  
Policy Division

Attachment: Text of Amended Regulation